No. 832

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CHARLES ELMORE CROPLEY
CLERK

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

**IN THE MATTER OF HELEN ELIZABETH McCLURE INNIS, BANKRUPT**

HELEN ELIZABETH McCLURE INNIS,
*Petitioner,*

v.

UNITED MERCANTILE AGENCIES, INC.,
*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, WITH SUPPORTING BRIEF**

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C. E. Pauley & Co., Inc., Indianapolis

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### A

### SUMMARY STATEMENT OF THE MATTER INVOLVED

The petitioner owned twenty shares of stock in an Indiana state bank which went into liquidation conducted by the Department of Financial Institutions of the State of Indiana through a special representative. Thereafter, on

March 7, 1935, said special representative commenced an action in the Circuit Court of Tippecanoe County, Indiana, against the stockholders of said bank, including petitioner, to enforce stockholders' liability. Petitioner was served with summons April 15, 1935, and on November 27, 1935, filed her petition in voluntary bankruptcy in the United States District Court for the Southern District of Indiana (Indianapolis Division) and was duly adjudicated a bankrupt. (R. 5.)

In Schedule A-3 of said petition she not only listed the claim of the special representative, stating the number of shares and the amount claimed, but specifically stated that suit was pending thereon, describing the court and the cause number. (R. 6.)

All required statutory notices were duly given by the Referee. On March 25, 1936, an order of discharge was duly entered; and on April 13, 1936, a copy thereof was duly recorded in Fountain County, Indiana, where Petitioner then resided. No appearance was entered in the state court on account of the serious illness of her mother at the time of the service of summons and the later belief that the discharge in bankruptcy relieved her of giving the matter further attention. No trustee was appointed in the bankruptcy proceedings, no proof of claim was filed with respect to said stock liability, and no payment was made to creditors. (R. 6.)

In the summer of 1936 petitioner moved to California. More than three years thereafter (October 27, 1939) the special representative, who had knowledge of said bankruptcy petition and discharge, obtained a default judgment against Petitioner in the amount of Two Thousand Dollars ($2,000.00) and interest. (R. 6, 8, 9.) On April 23, 1942,

Respondent, in the regular course of its business of buying assets of banks in liquidation, purchased all remaining assets from said special representative for Ten Thousand Nine Hundred Sixty-three Dollars ($10,963.00). The assets so purchased were in the face amount of Five Hundred Seventy-six Thousand Two Hundred Fifteen Dollars Three Cents ($576,215.03) and included stock liability claims in the face amount of Thirty-six Thousand Four Hundred Ninety-six Dollars Eighty-five Cents ($36,496.85), including the judgment against petitioner. (R. 6, 7, 8, 9, 10.)

Petitioner learned of said judgment and respondent's purchase thereof by a letter from respondent dated August 24, 1942. (R. 9.) This was subsequent to the expiration of the two-year period granted by the Indiana statutes to seek relief from a judgment taken against a party through his mistake, inadvertence, surprise or excusable neglect. (Burns' Ind. Stat. Ann. 1933, Sec. 2-1068; Acts 1881 (Spec. Sess.), Ch. 38, Sec. 135, p. 240, as amended by Acts of 1921, Ch. 115, Sec. 1, p. 277.)

After her discharge, Petitioner acquired an interest in real estate. (R. 7, 8.) Petitioner's interest therein was advertised for sale on execution of said judgment to be held on January 20, 1943. (R. 8.) On January 15, 1943, Petitioner filed in the court in which the bankruptcy proceeding had been filed her supplemental petition to restrain said sale. (R. 1 to 3.)

The District Court on the foregoing facts enjoined the Sheriff of Fountain County, Indiana, and respondent from proceeding to realize on said judgment by levy, execution, sale or otherwise. (R. 11.) The Circuit Court of Appeals for the Seventh Circuit on appeal by the respondent above reversed said judgment with directions to proceed in ac-

cordance with its opinion. (R. 27.) The opinion is not yet reported and appears in the Record, at pp. 22 to 26.

## B

## JURISDICTIONAL STATEMENT

The United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and judgment reversing the judgment of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, on February 18, 1944. (R. 22 to 27 incl.) No petition for rehearing was filed. This Court has jurisdiction under Section 240(a) of the Judicial Code, as amended. (28 U.S.C.A., Sec. 347(a) ).

## C

## STATEMENT OF QUESTIONS PRESENTED

1. Whether a bankruptcy court may in the exercise of its discretion properly enjoin the enforcement of a state court judgment taken by default more than three years after the judgment defendant has been discharged in bankruptcy where (a) the action was pending against the petitioner and a number of other defendants and service was obtained on the petitioner prior to the filing of the bankruptcy proceeding; (b) the debt was scheduled by the bankrupt and the pending case specifically described in connection therewith; (c) all notices were duly served and the plaintiff in the pending action had full knowledge of the bankruptcy proceeding and the discharge; (d) the failure of the bankrupt to take steps to stay the state court proceeding or appear and bring such discharge to the atten-

tion of the state court resulted from the belief that the discharge in bankruptcy rendered such action unnecessary; (e) no step was taken against the bankrupt in said pending state court proceeding until a default judgment was obtained three years and eight months after the discharge in bankruptcy and three years and two months after the bankrupt had removed to another state; and (f) no attempt to enforce said judgment was made and the bankrupt had no knowledge thereof until nearly three years thereafter, being ten months after the expiration of the period allowed a party under the applicable state law to institute proceedings to obtain relief from a judgment taken against him by his mistake, inadvertence, surprise, or excusable neglect.

2. Whether the failure of the bankrupt under such circumstances, especially where as here the state court plaintiff was not a private citizen but a statutory representative of the State of Indiana, and the bankrupt was one of a number of defendants, to obtain an order in the bankruptcy court prior to her discharge, staying said cause as to her, or to appear in the state court proceeding thereafter and set up the bankruptcy discharge, constitutes such negligence and fault on her part as to constitute a bar to equitable relief in the bankruptcy court, subsequent to discharge.

3. Whether the power of the bankruptcy court to grant injunctive relief in aid of the discharge subsequent thereto is limited to cases involving fraud, duress, coercion or other similar grounds.

4. Whether the conduct of the special representative of the Department of Financial Institutions of the State of Indiana in obtaining a default judgment after appearing to acquiesce in the effect of the bankruptcy proceeding by taking no action in the state court until more than three

years after the discharge and more than three years after petitioner had left the state, and his subsequent conduct in failing to notify petitioner of said judgment until the time when statutory relief might have been sought therefrom in the state court had expired, was not so inequitable and unconscionable as to constitute a proper basis for the exercise of equitable power by the bankruptcy court on the supplemental petition.

## D

## STATEMENT OF REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

1. In holding that Petitioner should be denied relief herein the Circuit Court of Appeals for the Seventh Circuit has rendered a decision in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in *Holmes v. Rowe,* 97 F(2d) 537, on the same matter.

2. In so holding the said Court has decided a federal question in a way probably in conflict with the decision of this Court in *Local Loan Co. v. Hunt,* 292 U.S. 234, 78 LEd. 1230.

3. In so holding the said Court has decided an important question of federal law which has not been but should be settled by this Court.

WHEREFORE, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify to this Court for its review and determination, on a day certain to be herein named, all

proceedings in the case numbered and entitled on its docket No. 8385, In the Matter of Helen Elizabeth McClure Innis, Bankrupt, United Mercantile Agencies, Inc., Appellant, v. Helen Elizabeth McClure Innis, Appellee, and that the judgment of said Circuit Court of Appeals be reversed by this Honorable Court, and the judgment of the District Court of the United States for the Southern District of Indiana be affirmed, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may be meet and just, and your petitioner will ever pray.

HELEN ELIZARETH MCCLURE INNIS,

By: Earl B. Barnes,
Alan W. Boyd,

Attorney for Petitioner.